

1 LUKE W. COLE, California Bar No. 145,505  
2 CAROLINE FARRELL, California Bar No. 202,871  
3 BRENT J. NEWELL, California Bar No. 210,312  
4 Center on Race, Poverty & the Environment  
5 47 Kearny St, Suite 804  
6 San Francisco, CA 94108  
7 415/346-4179 • fax 415/346-8723  
8  
9 NANCY S. WAINWRIGHT, Alaska Bar No. 8711071  
10 Law Offices of Nancy S. Wainwright  
11 13030 Back Road, Suite 555  
12 Anchorage, AK 99515-3358  
13 907/345-5595 • fax 907/345-3629  
14  
15 Attorneys for Plaintiffs Enoch Adams, Jr., Leroy  
16 Adams, Andrew Koenig, Jerry Norton, David  
17 Swan and Joseph Swan  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

16 ENOCH ADAMS, JR., LEROY ADAMS,  
17 ANDREW KOENIG, JERRY NORTON  
18 DAVID SWAN and JOSEPH SWAN,  
19 Plaintiffs,  
20 v.  
21 TECK COMINCO ALASKA INCORPORATED  
22 Defendant.  
23  
24 NANA REGIONAL CORPORATION and  
25 NORTHWEST ARCTIC BOROUGH,  
26 Intervenor-Defendants.  
27  
28

Case No. A04-49 (JWS)

**REPLY WITHDRAWING  
OBJECTIONS TO  
PENALTY PHASE WITNESS  
LIST & MOTIONS IN LIMINE  
TO EXCLUDE WITNESSES  
AND EVIDENCE THAT IS  
NOT RELEVANT**  
(Evidence Code §402)

1 **I. TECK COMINCO HAS LARGELY CURED ADAMS’S OBJECTIONS.**

2 Adams moved to exclude the testimony of 56 of Teck Cominco’s witnesses on grounds of  
3 relevance, as nothing in Teck Cominco’s description of their testimony indicated how that  
4 testimony would be relevant to the issues to be determined at the penalty phase of trial – the  
5 application of the six penalty factors to the maximum penalty that could be assessed. Docket 227.  
6

7 In Response, Teck Cominco – through its Opposition at Docket 261 and its witness chart  
8 at 261-2 – has largely cured Adams’s objections. Many of Teck Cominco’s assertions about the  
9 scope of testimony – listing all six penalty factors for almost every witness, for example – are  
10 grossly overbroad, but Teck Cominco’s responses and witness list demonstrate the relevance of  
11 its witnesses at the penalty phase. Adams thus withdraws its motion *in limine* as to the relevance  
12 of Teck Cominco’s penalty phase witnesses, Docket 227.  
13  
14

15 Adams withdrawing this particular challenge to Teck Cominco’s penalty phase witnesses  
16 does not affect its ongoing challenge to many of these same witnesses on other grounds. Adams  
17 action here does not affect its motions challenging Teck Cominco’s lack of specificity about its  
18 witnesses’s testimony (Dockets 225 and 286), its motions with respect to the relevance and  
19 specificity of Teck Cominco’s liability phase witnesses (Dockets 211 and 221), and its motion to  
20 exclude the testimony of expert witnesses for whom Teck Cominco did not provide summaries of  
21 qualifications (Docket 210).  
22  
23

24 Respectfully submitted this 29th day of February, 2008.

25  
26 /S/ Luke Cole

27 Luke Cole

28 Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of February 2008, a true and correct copy of the foregoing Reply Withdrawing Plaintiffs' Objections to Penalty Phase Witness List and Motions to Exclude Witnesses was served, via electronic mail, on the below identified parties of record:

Sean Halloran  
Hartig Rhodes  
717 K Street  
Anchorage, AK 99501

Nancy S. Wainwright  
Law Offices of Nancy S. Wainwright  
13030 Back Road, Suite 555  
Anchorage, Alaska 99515-3538

James E. Torgerson  
Heller Ehrman White & McAuliffe LLP  
510 L Street, Suite 500  
Anchorage, Alaska 99501-1959

David S. Case  
Landye Bennett Blumstein LLP  
701 W. 8<sup>th</sup> Ave., Suite 1200  
Anchorage, AK 99501

Thane Tienison  
Landye Bennet Blumstein  
1300 Southwest Fifth Ave, Suite 3500  
Portland, OR 97201

---

/s/ Luke Cole

Luke Cole